

SERVED: May 12, 2000

NTSB Order No. EA-4839

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Issued under delegated authority (49 C.F.R. 800.24)
on the 12th day of May, 2000

_____)	
JANE F. GARVEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-15741
v.)	
)	
REX ERIC DAVIS,)	
)	
Respondent.)	
_____)	

ORDER DISMISSING APPEAL

The Administrator has moved to dismiss the appeal filed by the respondent in this proceeding because it was not perfected by the filing of a timely appeal brief, as required by Section 821.48(a) of the Board's Rules of Practice (49 C.F.R. Part 821).¹ We will grant the motion, to which respondent filed no response.

¹Section 821.48(a) provides as follows:

§ 821.48(a) **Briefs and oral argument.**

(a) Appeal briefs. Each appeal must be perfected within 50 days after an oral initial decision has been rendered, or 30 days after service of a written initial decision, by filing with the Board and serving on the other party a brief in support of the appeal. Appeals may be dismissed by the Board on its own initiative or on motion of the other party, in cases where a party who has filed a notice of appeal fails to perfect his appeal by filing a timely brief.

Respondent's appeal brief was due on March 20, 2000, 30 days after service of the law judge's February 18 initial decision.² On March 29, respondent faxed the Board a request for an extension of time to file the brief, based on the assertion that he had not received a copy of the hearing transcript until the 28th.³ Respondent gave no reason why the extension could not have been requested before the brief was due, and the extension request was not granted. He subsequently submitted an undated appeal brief, which the Board received on April 5, 2000.

In the absence of good cause to excuse respondent's failure either to perfect his appeal by filing a timely appeal brief or to submit a timely extension request for filing the brief after the deadline, dismissal of his appeal is required by Board precedent. See Administrator v. Hooper, 6 NTSB 559 (1988).

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's motion to dismiss is granted; and
2. The respondent's appeal is dismissed.

Ronald S. Battocchi
General Counsel

²The law judge affirmed a 90-day suspension of "any and all Inspection Authorizations held by [respondent], including Inspection Authorization Certificate No. 452909751," for alleged violations of sections 43.13(b) and 65.81(b) of the Federal Aviation Regulations, 14 CFR Parts 43 and 65.

³It would appear that respondent's notice of appeal was also late-filed. Although it is dated February 28, it was faxed to the Board on February 29, one day beyond the 10-day time limit. See Section 821.47(a) of the Board's rules.